

REMARKS

The above amendments and following remarks are submitted under 37 C.F.R. 1.116 in response to the Final Official Action of the Examiner mailed December 5, 2002. Having addressed all objections and grounds of rejection, claims 1-20 as amended, being all the pending claims, are now deemed in condition for allowance. Entry of these amendments and reconsideration to that end is respectfully requested.

As explained below, the Examiner has prematurely issued a final rejection. On January 21, 2003, John Rooney, attorney of record for Applicants, placed a call to the Examiner. The Examiner was not available, so a message was left stating Applicants' position that the present final rejection is premature and requesting that the Examiner return the call at his convenience to discuss withdrawal of the finality of the rejection. For whatever reason, the call was not returned. Thus, the present response must be assumed by Applicants to be an Amendment After Final, and this filing is made within the priority period.

The pending Final Rejections are premature because the Examiner has presented new grounds of rejection to claims which have not been amended. The present application as filed contained claims 1-20. The Examiner rejected all pending claims

in a first amended June 19, 2002 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,583,561, issued to Baker (hereinafter referred to as "Baker"). In response thereto, Applicants submitted an amendment mailed August 30, 2002 which amended claims 1-10, but did not amend claims 11-20. Furthermore, Applicants submitted arguments concerning the patentability of amended claims 1-10 and unamended claims 11-20.

In the pending Final Official Action, the Examiner states:

Applicants' arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

He then proceeds to finally reject claims 1-20 under 35 U.S.C. 103(a) as being obvious over Baker in view of U.S. Patent No. 6,049,823, issued to Hwang (hereinafter referred to as "Hwang"). Thus, claims 11-20 (fully one half of the pending claims) now stand finally rejected under new grounds of rejection not necessitated by any amendment to claims 11-20. Therefore, the Examiner should withdraw the finality of the pending amendment under MPEP 706.07 and treat the present response under 37 C.F.R. 1.112.

It is an important feature of Applicants' invention that video servers overlap in their coverage of subscribers. That means that for any particular request from any particular subscriber, any one of a plurality of video servers can be assigned by the transaction server to stream the requested video

programming to the requestor¹. This architecture is especially efficient, because it permits the transaction server to "balance" the video streaming loading over a plurality of otherwise identical video servers.

Independent claims 1, 6, 11, and 16, being all pending independent claims have been herewith amended to more clearly indicate this structural limitation. It is submitted that the claims, as originally presented, were so limited, but these amendments should remove any potential ambiguity.

The prior art of record does not show this important feature. As to Baker, the Examiner states:

Baker does not disclose a plurality of video servers coupled to the transaction server.

It is clear that Hwang is also not so structured, but actually teaches the desirability of "pre-assigning" the channel processors. It states at column 6, lines 31-34:

The reason for creating an internal control link is to pre-assign the Channel-processor to host a number of connected iTV panels and to divert the traffic for interactivity away from the internal network link.

Therefore, pending claims 1-20, as amended, are readily distinguishable over the prior art of record.

¹See the Specification at page 14, lines 8-9, for example. This feature is also shown in the drawings. See Fig. 1, for example.

Having thus responded to each objection and ground of rejection, Applicants respectfully request entry of this amendment and allowance of claims 1-20, being the only pending claims.

Respectfully submitted,

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By their attorney,

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